



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/171056

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 30, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on February 15, 2016, at Ashland, Wisconsin.

The issue for determination is whether the petitioner received an overpayment of FoodShare because he failed to list all of the members of his household when he applied for benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Public Assistance Collection Unit  
PO Box 8938  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Ashland County.
2. The petitioner and his former wife were divorced in 2007. Although still divorced, they have lived together since before May 2014.

3. The petitioner applied for FoodShare on May 1, 2014. He indicated on his application that he lives alone.
4. Since moving back together, the petitioner and his former wife have purchased and prepared food together.
5. The petitioner's former wife worked 40 hours a week throughout the period the petitioner received FoodShare. She earns \$70,275 per year, or an average of \$5,856.25 per month.
6. Two hundred percent of the federal poverty level for a two-person household was between \$2,586 and \$2,622 per month from May 2014 through April 2015. *FoodShare Wisconsin Handbook*, § 8.1.1.1.
7. The petitioner worked 27 – 40 hours a week from October 1, 2014, through March 31, 2015. He did not report this to the agency.
8. The petitioner received \$189 in FoodShare each month from May through September 2014 and \$194 each month from October 2014 through April 2015.
9. The department seeks to recover all of the \$2,303 in FoodShare the petitioner received from May 2014 through April 2015.

### **DISCUSSION**

The department must recover all overpayments of FoodShare, regardless of who is at fault. 7 CFR § 273.18(a). FoodShare benefits depend upon a household's number of persons and total income. A FoodShare household consists of a "group of individuals who live together and customarily purchase food and prepare meals together for home consumption." 7 CFR § 273.1(a)(3). Spouses who live together are considered part of the same FoodShare household even if they do not purchase and prepare food together. 7 CFR § 273.1(b)(1)(i).

The department seeks to recover all of the \$2,303 FoodShare benefits the petitioner received from May 2014 through April 2015 because it contends that he failed to accurately report his household size and income. He was married in 1976 but reported that he was single when seeking FoodShare. Technically this is correct because he got divorced several years ago. But he and his former wife have lived together since before he applied for FoodShare. He testified that they no longer have any romantic relationship but admits they have an arrangement where she provides most of the financial support while he maintains their premises. They purchase their food together, have one refrigerator, do not separate that food, and often eat together. Whether they still sleep in the same bed does not matter. What matters is that they purchase and prepare food together. Because they do, they are considered a single household, and his benefits should have been based upon their combined income.

Households whose gross income exceeds 200% of the federal poverty level are not eligible for FoodShare. *FoodShare Wisconsin Handbook*, § 4.2.1.1. For a two-person household, the size of the petitioner's when his former wife is included, 200% of the federal poverty level was between \$2,586 and \$2,622 per month during the period the department alleges that the overpayment occurred. *FoodShare Wisconsin Handbook*, § 8.1.1. Gross household income includes all income from any source unless FoodShare regulations specifically exclude it. 7 CFR § 273.9(b). The petitioner's former wife was earning an average of \$5,856.25 a month during this period. The agency also alleges that the petitioner failed to report income, but it is not necessary to consider this because his former wife's income by itself exceeded the program's gross income limit every month he received FoodShare. As a result, he should not have received any of the benefits he did, and the department correctly seeks to recover the entire \$2,303.

### CONCLUSIONS OF LAW

1. The income earned by the petitioner's former wife should have been used to determine his FoodShare allotment during all times relevant to this decision because they purchased and prepared food together.
2. The department correctly determined that the petitioner must repay \$2,303 in FoodShare he received from May 2014 through April 2015 because his household's gross income exceeded the program's categorical limit.

**THEREFORE, it is**

### ORDERED

The petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 23rd day of February, 2016

---

\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 23, 2016.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability